Supreme Court, U.S.
FILED
OCT 31 1980
MICHAEL RODAK, JR., CLERK

No. 80-481

In the Supreme Court of the United States

OCTOBER TERM, 1980

PAUL KALMANOVITZ, PETITIONER

v.

SECURITIES AND EXCHANGE COMMISSION

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE DISTRICT OF COLUMBIA CIRCUIT

BRIEF FOR THE SECURITIES AND EXCHANGE COMMISSION IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether a nominee for director who permits his name to be used in a proxy statement that he knows to be fraudulent, and assumes control over a publicly-held corporation by use of that proxy statement, can be held liable for violations of Section 14(a) of the Securities Exchange Act of 1934 even though, at the time the proxy statement was distributed, he was not a member of the management team that directly solicited the proxies.

2. Whether the court of appeals, on the basis of the district court's express findings of fact, correctly concluded that petitioner aided and abetted violations of Section 13(a) of the Securities Exchange Act of 1934 even

though the district court did not expressly state that its conclusion that petitioner violated Section 13(a) was based on an aiding and abetting theory.

3. Whether the district court's finding that petitioner had knowledge of the nature and consequences of his deceptive acts was sufficient to establish scienter under Section 10(b) of the Securities Exchange Act of 1934.

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OPINIONS BELOW

The opinion of the court of appeals (Pet. App. 113-149)[1] is not yet officially reported. The opinion of the district court (Pet. App. 1-112) is not officially reported.[2]

JURISDICTION

The judgment of the court of appeals was entered on May 29, 1980. The petition for a writ of certiorari was filed on August 25, 1980. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

STATEMENT

1. In March 1975, Falstaff Brewing Corporation and petitioner reached an agreement, subject to approval by Falstaff's shareholders, under which petitioner would pay $10 million for the purchase of 100,000 shares of Falstaff preferred stock (Pet. App. 6, para. 7; 23-24, para. 33; 114-115, 118). Each share of preferred stock was assigned 45 votes to ensure that approval of the transaction would give petitioner majority voting control of Falstaff (*id.* at 6-7, para. 7; 24, para. 33; 115). In addition, the agreement provided that, if Falstaff's shareholders approved the stock purchases, petitioner would have the right to name a majority of the Falstaff board of directors (*id.* at 24-25, para. 33).

Subsequently, Falstaff distributed a proxy statement for the April 1975 annual meeting of shareholders to obtain approval of the agreement and to elect a board of

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[1] Page numbers were not included in the 154-page appendix to the petition for certiorari. The page number references in this brief are based on our manual pagination of the appendix.

[2] The district court's judgment granting injunctive relief against petitioner is not included in the appendix to the petition for certiorari. We have attached the judgment as an appendix to this brief.

directors that was to include petitioner and his nominees (Pet. App. 7, para. 8; 24, para. 33; 30, para. 42; 119). The proxy statement, which petitioner concedes was "misleading" (Pet. 10), omitted to disclose that Falstaff's bank and insurance lenders had forced it to mortgage substantially all of its assets as collateral for over $28 million in outstanding loans, on which Falstaff previously had defaulted (Pet. App. 18, para. 22; 21, para. 30; 27-28, para. 37; 74, para. 14; 117-118, 120); that those same lenders had caused Falstaff to agree not to prepay any of the loans except on a pro rata basis (*id.* at 19, para. 23; 21, para. 30; 28, para. 37; 118, 120); and that, upon assuming control of the company, petitioner intended to make loan prepayments on a non-pro rata basis despite his knowledge that this could lead Falstaff's lenders to declare a default and foreclose on Falstaff's assets (*id.* at 16, para. 19; 20, paras. 25, 27; 21, paras. 28, 30; 27, para. 36; 76, para. 15; 119, 120).[3] Petitioner was given a draft of the proxy statement in March 1975 (*id.* at 29, para. 40; 119, 122). He read the final proxy statement, which was distributed to shareholders four weeks before the shareholders' meeting, shortly after it was distributed (*id.* at 30, para. 41; 119, 122). After that reading, petitioner "thought that the statement was fraudulent but elected to say nothing about it" (*id.* at 119 (footnote omitted); see also *id.* at 30, para. 41).

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[3] The proxy statement also failed to disclose two potential conflicts of interest between Falstaff and petitioner (Pet. App. 25, para. 34; 28, para. 38; 72, para. 11; 76, para. 15a; 119-120) and failed adequately to disclose that shareholder approval would shift control of Falstaff to petitioner (*id.* at 25-26, para. 35; 73, para. 12; 120 & n.4).

The shareholders approved the agreement and elected petitioner and his nominees to the board of directors (Pet. App. 7, para. 9). Under petitioner's stewardship, Falstaff continued to conceal material facts regarding petitioner's takeover and its consequences. Among other things, the company failed to disclose in a timely and accurate manner in reports required to be filed with the Securities and Exchange Commission (i) that petitioner carried out his plan to prepay certain high-interest loans in violation of Falstaff's agreement to pay its debts only on a pro rata basis (*id.* at 22, para. 31; 33-34, para. 49; 128 n.12), (ii) that, as a result of the prepayments, Falstaff's lenders declared in default millions of dollars in outstanding loans secured by mortgages on substantially all of Falstaff's property (*id.* at 22-23, para. 32; 34, para. 49a; 40, para. 57a; 85, para. 29; 86-87, para. 31; 128 n.12, 130), and (iii) that, as a further consequence of this conduct, litigation was commenced between Falstaff and certain of its lenders in which the lenders sought to recover over $12 million in outstanding indebtedness and nearly $27 million in compensatory and punitive damages (*id.* at 36-37, para. 53; 86, para. 30; 127-128 n.12, 128-129 n.13, 130). Petitioner was aware of the Commission's rules requiring disclosure of defaults and material information regarding litigation, and he was also aware of the circumstances surrounding Falstaff's defaults and the ensuing litigation (*id.* at 35, para. 50; 36, para. 53; 37, para. 54; 132). Nevertheless, he participated in drafting (*id.* at 36, para. 53; 132) and signed (J.A. 63, 64)[4] periodic reports filed with the Commission by Falstaff that misrepresented and failed to disclose material facts concerning these events.

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[4]"J.A." refers to the joint appendix filed in the court of appeals.

Subsequently, in April 1977, Falstaff sent its shareholders a proxy statement soliciting proxies for the election of directors (including the reelection of petitioner) and an amendment to the corporation's charter that would permit it to pay dividends on petitioner's preferred stock in common stock rather than cash (Pet. App. 44-45, paras. 67-68; 115, 134). The proxy statement did not disclose that petitioner, the only recipient of the proposed stock dividend, controlled Falstaff's management, which "highly recommend[ed]" the dividend (*id.* at 46-49, paras. 69-70; 136-137). In addition, the proxy statement misleadingly referred to an audit committee that had never met (*id.* at 51-52, para. 70(m); 65, para. 93; 81-82, para. 21; 99-100, para. 49(f); 134, 137-138) and failed to disclose information specifically required by Commission regulations, including the number of common shares petitioner would receive under the proposed dividend and the source of the common stock to be used in paying the dividend (*id.* at 49-51, para. 70(f)-(k); 81, para. 20; 134). Petitioner drafted a rider to the 1977 proxy statement that advised shareholders that the Commission had taken a "no comment" position on the proxy statement (*id.* at 56-57, para. 78; 82, para. 22; 134, 135 n.19). In fact, however, the Commission's staff had informed Falstaff that in its view the proxy statement was deficient (*id.* at 55-57, paras. 76, 78; 97, para. 49(b); 135 n.19). Furthermore, petitioner directed that the proxy statement be distributed to shareholders notwithstanding the concern expressed by the primary draftsman of the statement and by the Commission's staff that it was deficient (*id.* at 52, para. 71; 54-55 paras. 74-75; 58, para. 79; 97, para. 49(b)).

2. The Commission brought this action in the United States District Court for the District of Columbia seeking injunctive and other relief against Falstaff, petitioner and two former directors of Falstaff.[5] The Commission alleged numerous violations of proxy, reporting and antifraud provisions of the federal securities laws. Following a non-jury trial, the district court found that both Falstaff[6] and petitioner had engaged in a "chronic pattern of violations [of the federal securities laws], which has continued up to the present time" (Pet. App. 96, para. 48), and granted the injunctive relief sought by the Commission.[7] The court found that although petitioner was not a member of Falstaff's management when the 1975 proxy statement was distributed, he knew that the proxy statement was fraudulent and had a duty under Section 14(a) of the Securities Exchange Act of 1934, 15 U.S.C. 78n(a), to attempt to have the statement corrected before the shareholders' meeting (Pet. App. 77-80, paras. 16-16c). That duty arose because petitioner permitted his name to be used in the proxy statement and there was a "substantial connection" between the use of his name and the solicitation effort (*ibid.*). The court also found petitioner liable under Section 13(a) of the Act, 15 U.S.C. 78m(a), based on violations of periodic reporting requirements in which he had been a knowing and active

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[5] The two former directors named in the complaint consented to the entry of a permanent injunction against them without admitting or denying the violations alleged.

[6] Falstaff has not sought review by this Court of the court of appeals' decision.

[7] The court declined to grant the ancillary relief requested by the Commission (Pet. App. 103-104, paras. 53-54). The Commission did not appeal that determination.

participant (Pet. App. 68-69, para. 4; 83-88, paras. 27-33).[8] Furthermore, the court held that the Commission's proof that petitioner's proxy and reporting violations were knowing and reckless was sufficient to establish scienter under Section 10(b), 15 U.S.C. 78j(b) (Pet. App. 90-91, paras. 37-38a) and that his actions therefore violated that Section as well (*id.* at 88-91, paras. 34-38a).[9]

3. The court of appeals affirmed. With respect to Section 14(a) and the fraudulent 1975 proxy statement, it found that the use of petitioner's name in the proxy statement was "pivotal" in the solicitation effort (Pet. App. 123) and that holding him liable for proxy violations therefore was proper (*id.* at 121-125). Concerning the reporting requirements of Section 13(a), the court held that the evidence and findings established that petitioner,

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[8]For example, the district court found that outside counsel to Falstaff had sent a letter to petitioner expressing concern over Falstaff's compliance with the federal securities laws and recommending filing with the Commission a current report on Form 8-K regarding the declaration of default (Pet. App. 35, para. 50). The court also found that petitioner knew that Form 8-K required disclosure of certain information with respect to significant litigation (*id.* at 37, para. 54); that petitioner participated in drafting the January 1976 current report with its inadequate description of the litigation (*id.* at 37-38, paras. 55-55a); and that petitioner considered the acceleration of the insurance company loans, if enforceable, to be a substantial threat to Falstaff's financial future (*id.* at 41, para. 59). On appeal, petitioner did "not claim that any of these findings [was] clearly erroneous" (*id.* at 132; footnote omitted).

[9]The district court also concluded that petitioner violated Section 13(d) of the Securities Exchange Act of 1934, 15 U.S.C. 78m(d), by failing to file a report of beneficial ownership until more than a year after it was due (at which time he filed a materially false report) (Pet. App. 43-44, paras. 63-66a; 91-94, paras. 39-45a), and that he further violated Section 14(a) through material misrepresentations in the 1977 proxy statement (Pet. App. 80-82, paras. 17-22). Petitioner does not challenge these findings of violations in this Court.

through his knowing and active participation, aided and abetted Falstaff's violations (Pet. App. 131-133 & n.17). In response to the contention that the district court did not expressly state that petitioner's Section 13(a) violations were premised on an aiding and abetting theory, the court of appeals explained (Pet. App. 132):

> We do not believe that when a judge makes ample and unambiguous findings of fact, his conclusion that the defendant violated the law must be overturned simply because he did not state the theory he obviously was using *in haec verba*.

On the question of scienter under Section 10(b), the court of appeals held that "because [petitioner] knew the nature and consequences of his actions, he acted with scienter" (*id.* at 142; footnote omitted).[10]

ARGUMENT

The decision of the court of appeals, on which we principally rely, is correct and does not conflict with any decision of this Court or any other court of appeals. Further review is therefore unwarranted.

1. Petitioner argues (Pet. 15) that he is not liable under Section 14(a) of the Securities Exchange Act of 1934 based on the knowing and material misrepresentations contained in the 1975 proxy statement because he was "neither an officer, nor director, nor controlling stockholder" of Falstaff, whose management directly solicited the proxies. However, "[t]he short answer is that

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[10] The court of appeals declined to reach the question whether conduct that is merely reckless satisfies the scienter standard (Pet. App. 142 n.27).

Congress did not write the statute" in a way that lends any support to petitioner's contentions. *United States* v. *Naftalin*, 441 U.S. 768, 773 (1979).[11]

Section 14(a) is not limited to corporate insiders. It expressly applies to "any person * * * [who] * * * solicit[s] or * * * permit[s] the use of his name to solicit" proxies in violation of the Commission's proxy rules. In the present case, it is plain that petitioner "permit[ted] the use of his name to solicit" proxies in violation of those rules.[12] His name appeared 11 times within the nine-page proxy statement (Pet. App. 122), and he was directly interested in each of the matters for which shareholder votes were solicited. The proxy statement not only identified petitioner as a director nominee, but also stated that, if the stockholders voted in favor of the proposals, he would be empowered to nominate a majority of the members of Falstaff's board of directors.

Yamamoto v. *Omiya*, 564 F. 2d 1319 (9th Cir. 1977), on which petitioner relies (Pet. 17-19, 22-24), has no bearing on the issues presented here. Unlike the present case, *Yamamoto* did not involve a nominee director who would assume control of a corporation if the shareholders approved the matters described in the proxy statement.

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[11] This Court frequently has emphasized in construing the federal securities laws that " '[t]he starting point in every case involving construction of a statute is the language itself.' " *International Brotherhood of Teamsters* v. *Daniel*, 439 U.S. 551, 558 (1979), quoting *Blue Chip Stamps* v. *Manor Drug Stores*, 421 U.S. 723, 756 (1975) (Powell, J., concurring). See also *Aaron* v. *SEC*, No. 79-66 (June 2, 1980), slip op. 9; *Transamerica Mortgage Advisors, Inc.* v. *Lewis*, 444 U.S. 11, 16 (1979).

[12] In addition, as the court of appeals found, although the proxies "nominally" were solicited by Falstaff's management, "in reality, it was [petitioner] who was seeking the shareholders' votes to approve his taking control" (Pet. App. 123).

Rather, it involved a non-affiliated individual who sought to purchase a building from the corporation in question. The Ninth Circuit concluded that, because a reasonable shareholder would be indifferent to the identity of the purchaser of the building, there was no "substantial connection" between the use of the purchaser's name in the proxy statement and the solicitation effort. In contrast, a reasonable shareholder hardly would be indifferent to the identity of a party such as petitioner who was seeking control of the company. Accordingly, both the district court (Pet. App. 77-80, paras. 16b-16c) and the court of appeals (*id.* at 122-125 & n.8) properly concluded that the "substantial connection" test was met. See also *Chris-Craft Industries, Inc.* v. *Independent Stockholders Committee*, 354 F. Supp. 895, 915 (D. Del. 1973) where, in holding outside director nominees liable for proxy violations, the court stated:

> [S]ince the major object of the proxy contest [is] to install the nominees into positions where they would ostensibly control the corporation, all participants working for their election are in a sense agents of the nominees, and thus the nominees must be expected to assume some responsibility for the actions of their agents.[13]

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[13]In any event, petitioner does not contest the conclusion of both courts below that he knowingly violated Section 14(a) *after* he became a director and assumed control over Falstaff. The numerous material misrepresentations in the 1977 proxy statement for which petitioner was found responsible are an independent basis for the district court's decision enjoining petitioner from further violations of Section 14(a) (see note 9, *supra*).

2. The issue whether liability under Section 13(a) of the Securities Exchange Act of 1934 can be "automatically extend[ed] beyond the 'issuer' * * * even when there is no finding of aiding and abetting" (Pet. 24) is not raised in this case. Petitioner does not contend that the evidence is insufficient to establish aiding and abetting liability, nor does he claim that the district court failed to make findings of fact sufficient to support such liability.[14] On the contrary, he urges (Pet. 25) that the district court was required to state "express[ly]" the legal conclusion that petitioner "aided or abetted" Section 13(a) violations. But where, as here, the district court makes unambiguous findings of fact that clearly establish aiding and abetting (see note 8, *supra*), and concludes as a matter of law that petitioner violated Section 13(a) (see pages 5-6, *supra*), there is no requirement that the court expressly characterize its conclusion of law in terms of aiding and abetting. Moreover, even if, contrary to the court of appeals' understanding of the district court's decision (Pet. App. 132-133), the district court had not relied on an aiding and abetting theory, the court of appeals would nonetheless have been free to determine that petitioner was an aider and abettor on the basis of the district court's express findings of fact. See, *e.g.*, *Massachusetts Mutual Life Insurance Co.* v. *Ludwig*, 426 U.S. 479, 480-481 (1976); *Dandridge* v. *Williams*, 397 U.S. 471, 475 n.6 (1970); *United States* v. *American Ry. Express Co.*, 265 U.S. 425, 435 (1924).

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[14]Aiding and abetting liability is established under the federal securities laws at least in those cases in which a securities violation occurs, the defendant is aware of it, and he knowingly and substantially participates in it. See, *e.g.*, *Gould* v. *American-Hawaiian Steamship Co.*, 535 F. 2d 761, 779 (3d Cir. 1976). As the court of appeals stated, here "a variety of violations of the reporting requirements did indeed occur" and "[t]he district court also found [petitioner's] participation in this wrongdoing to have been both knowing and substantial" (Pet. App. 131).

3. Petitioner also argues (Pet. 34) that "mere knowledge is not sufficient to establish scienter" under Section 10(b) of the Securities Exchange Act of 1934. He claims that "[t]here must be a finding of an 'intent to defraud' " (*ibid.*). As this Court has recognized, however, Section 10(b) proscribes "*knowing* or intentional misconduct." *Aaron* v. *SEC*, No. 79-66 (June 2, 1980), slip op. 9, quoting *Ernst & Ernst* v. *Hochfelder*, 425 U.S. 185, 197 (1976) (emphasis added). Here, petitioner clearly had knowledge of "the nature and consequences of his actions" (Pet. App. 142). The express findings of the lower courts that petitioner engaged in deceptive acts with that knowledge (see pages 2-7 & note 8, *supra*) are sufficient to establish his scienter. See, *e.g.*, *SEC* v. *Blatt*, 583 F. 2d 1325, 1334 (5th Cir. 1978); *Nelson* v. *Serwold*, 576 F. 2d 1332, 1337-1338 (9th Cir.), cert. denied, 439 U.S. 970 (1978); *Rolf* v. *Blyth, Eastman Dillon & Co.*, 570 F. 2d 38, 45 (2d Cir.), cert. denied, 439 U.S. 1039 (1978).[15]

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[15]Petitioner's reliance (Pet. 32-36) on this Court's order of remand in *Aaron* is entirely misplaced. The Court remanded in *Aaron* not because the district court's finding of scienter was premised on knowing or reckless misconduct, but rather because the court of appeals mistakenly had believed that scienter was not an element of a Section 10(b) violation and therefore had not reached the question whether the defendant had acted with scienter. *Aaron* v. *SEC*, *supra*, slip op. 4, 21. No similar problem is presented in this case.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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OCTOBER 1980

DOJ-1980-10

APPENDIX

UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

CIVIL ACTION NO. 77-0894

SECURITIES AND EXCHANGE COMMISSION,
PLAINTIFF

v.

FALSTAFF BREWING CORPORATION, ET AL.,
DEFENDANTS

[JUDGMENT OF PERMANENT INJUNCTION]

Plaintiff Securities and Exchange Commission ("Commission") having filed a complaint for injunctive and other relief (the "Complaint") and the Court having considered the pleadings and papers filed herein and having heard the trial of this matter and upon the findings of fact and conclusions of law reached by this Court and issued this date, and the Court being fully advised in the premises:

I

IT IS HEREBY ORDERED, ADJUDGED AND DECREED that Paul Kalmanovitz ("Kalmanovitz"), his agents, servants, employees and attorneys, and those persons in active concert or participation with them, and each of them be, and they are hereby, permanently enjoined from, directly or indirectly, in connection with the offer, purchase or sale of the securities of Falstaff, its subsidiaries and affiliates, or of any other issuer, by use of any means or instrumentality of interstate commerce, or of the mails or of any facility of any national securities exchange:

A. Employing any device, scheme, or artifice to defraud; or

B. Making any untrue statement of a material fact or omitting to state a material fact or omitting to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading, concerning, but not limited to:

(1) The financial condition of Falstaff or any other issuer;

(2) The business operations of Falstaff or any other issuer;

(3) The present and prospective value of the securities of Falstaff or any other issuer;

(4) The ownership and voting rights of the securities of Falstaff or any other issuer;

(5) The acquisition of any securities of Falstaff or any other issuer; and

(6) The dissemination of information with respect to Falstaff or any other issuer; or

C. Engaging in any act, practice or course of business which operates or would operate as a fraud or deceit upon any person,

in violation of Section 10(b) of the Securities Exchange Act of 1934 [15 U.S.C. §78j(b)] ("Exchange Act") and Rule 10b-5 [17 C.F.R. §240.10b-5] thereunder; it is

II

FURTHER ORDERED, ADJUDGED AND DECREED that Kalmanovitz, his agents, servants, employees and attorneys, and those persons in active concert or participation with them, and each of them be, and they are hereby, permanently enjoined from filing or causing to be filed with the Commission annual, current or other periodic reports with respect to Falstaff, its subsidiaries and affiliates, or any other issuer, which

contain any untrue statement of material fact or omit to state any material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading or which omit any material fact required to be contained therein, in violation of Section 13(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 12b-20, 13a-1, 13a-11 and 13a-13 [17 C.F.R. §§1240.12b-20, 240.13a-1, 240.13a-11 and 240.13a-13] thereunder; it is

III

FURTHER ORDERED, ADJUDGED AND DECREED that Kalmanovitz his agents, servants, employees and attorneys, and those persons in active concert or participation with them, and each of them be, and they are hereby, permanently enjoined from, directly or indirectly, with respect to securities of Falstaff, its subsidiaries and affiliates, or any other issuer, by the use of the mails or by any means or instrumentality of interstate commerce, or of any facility of a national securities exchange, or otherwise:

A. Soliciting or permitting the use of the name of Falstaff to solicit, any proxy or consent or authorization with respect to any class of voting securities of Falstaff, unless each person solicited is concurrently furnished or has perviously been furnished with a written proxy statement containing the information specified in Schedule 14A [17 C.F.R. §240.14a-101]; or

B. Using a proxy statement, information statement, form or proxy, notice of meeting or other communication, written or oral, containing any statement which, at the time and in the light of the circumstances under which it is made, is false or misleading with respect to any material fact, or which omits to state any material fact necessary in order to make the statements therein not

false or misleading or necessary to correct any statement in any earlier communication in connection with the same meeting or subject matter which has become false or misleading, in violation of Section 14(a) of the Exchange Act [15 U.S.C. §78m(a)] and Rules 14a-3 and 14a-9 [17 C.F.R. §§240.14a-3 and 240.14a-9] thereunder; it is

IV

FURTHER ORDERED, ADJUDGED AND DECREED that Kalmanovitz, his agents, servants, employees and attorneys, and those persons in active concert or participation with them be, and they hereby are, permanently enjoined from directly and indirectly, filing or causing to be filed with the Commission or disseminated or causing to be disseminated to any person any statement containing the information called for by Schedule 13D [17 C.F.R. §240.13d-101] pursuant to Section 13(d) of the Exchange Act [15 U.S.C. §78m(d)] and Rules 13d-1 and 13d-2 [17 C.F.R. §§240.13d-1 and 240.13d-2] thereunder, which contains any untrue statement of a material fact, which omits to state a material fact required to be stated therein, or which otherwise fails to comply with the requirements of Schedule 13D, or Section 13(d) of the Exchange Act, and are further permanently enjoined from, directly or indirectly, violating Section 13(d) of the Exchange Act and Rules 13d-1 and 13d-2 thereunder; it is

V

FURTHER ORDERED, ADJUDGED AND DECREED that Kalmanovitz, within thirty (30) days after the entry of this Order, or such later time as the Commission may permit, shall make such amendments and supplements as may be necessary or appropriate to his existing filings with the Commission in order that such filings not contain any untrue statements of material fact

or omit to state any material fact required to be stated therein or necessary to make any statement made in such filings not false or misleading in the light of the circumstances under which they were made; and it is

VI

FURTHER ORDERED, ADJUDGED AND DECREED that the Court shall retain jurisdiction of this action to implement and carry out the terms of this judgment.

There being no just reason for delay, the clerk of the Court is hereby directed to enter this Judgment forthwith.

/s/ HOWARD F. CORCORAN

UNITED STATES DISTRICT JUDGE

DATED: December 5, 1978
Washington, D.C.